IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NOS. 1716 OF 2004
WITH
SPECIAL CIVIL APPLICATION No 2479 of 2004

to

SPECIAL CIVIL APPLICATION No 2491 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRATAPBHAI DESAIBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2479 of 2004
MR. GIRISH PATEL, SENIOR ADVOCATE WITH
MR JOY MATHEW for Petitioner No. 1
MR. HASURKAR AGP for Respondent No. 1-3
MR. S.B. VAKIL SENIOR ADVOCATE WITH
MR AS VAKIL for Respondent No. 4
NOTICE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 21/07/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.M.MEHTA)

1. In these matters, we have already passed an order of even date rejecting all the petitions and recorded that 'reasons to follow'. The reasons are as under:

2. Pratapbhai Desaibhai Vasava and others, petitioners, have filed Special Civil Application No.1716 of 2004 challenging the action of respondent No.3, Mamlatdar, seeking to displace the petitioners from their current settlement in village Maljipura, as violative of Articles 14, 19 and 21 of the Constitution of India. The said petition, i.e. Special Civil Application No.1716 of 2004, was filed on 28.1.2004. We have heard Mr. Girish Patel, learned Senior Counsel, with Mr. Joy Mathew, learned advocate for the petitioners. We have also heard Mr. S.B.Vakil, learned Senior Counsel, with Mr. A.S. Vakil, learned advocate, for the respondent No.4 and also Mr. S.P. Hasurkar, learned AGP, for respondents Nos. 1 and 3. Mr. Hasurkar has produced an order dated 14.7.2004 passed by the Mamlatdar, Jhagadia, in case of one of the petitioners. The same is taken on record.

3. It may be noted that there are in all 13 petitioners who had originally filed Special Civil Application No.1716 of 2004. However, when the aforesaid matter reached for hearing before this Court on 10.2.2004, the learned Senior Counsel for the petitioners Mr. Girish Patel, assured the Division Bench that one page petition highlighting the peculiar facts and special circumstances obtainable to individual tribal shall be filed within two weeks. In view of the same, subsequent petitions, namely, Special Civil Applications Nos. 2479 of 2004 to 2491 of 2004 have been filed by the individual petitioners.

4. The relevant facts of the case are as under:

5. There is a village known as Maljipura in District Bharuch. The petitioners are poor tribals of Maljipura village. There are about 25 tribal families having their own homestead land in the Gamtal. They are residing on

this land for the last several decades. They are the owners of the said land. Some of the petitioners had their agricultural land near this homestead land. Some of them lost their land to Gujarat Mineral Development Corporation as the Corporation acquired the same for their mining activities.

5.1 It is further submitted that the petitioners have been staying on the land in question for the last several decades. Some of them have been allotted this piece of land by the revenue authorities after paying the prescribed fees. They pay all the revenues to the respondents. Some of the petitioners have constructed small residential houses on the said land. Rest of the petitioners or their forefathers have been staying on this property even before the Gamtal was formed. The petitioners relied upon the kabulayat and revenue receipts issued by the Government in this behalf.

5.2 It is the case of the petitioners that the State of Gujarat through the Gujarat Mineral Development Corporation ('Corporation' for short), desired to take away this land without following the procedure of the Land Acquisition Act. The Corporation has obtained some land to be allotted to the tribals whose lands are going to be taken away for the mining purpose. The new land is situated at a distance of more than 4 k.ms. from the present place. Some of the petitioners have got their agricultural land situated near the place where they are residing at present. There is no grazing land in and near the new site. Though good part of their grazing land is taken away by the Corporation, still they are left with small areas of grazing land near their present village. At the new site, no grazing land is available. In order to graze cattle, the petitioners will have to pass through other villages and the same will not be appreciated by the villagers. The petitioners are not paid or promised to be paid any compensation for their homestead land, houses, transportation, etc.

5.3 It is the case of the petitioners that the Corporation started mining activities in this region since several years. In the beginning, the Corporation used to approach the village leaders and bring pressure upon them to sell their land so that the Corporation may not have to go through the process of land acquisition as per the provisions of the Land Acquisition Act. Large number of tribals were thrown away from their land the only source of their livelihood in this fashion.

5.4 It is the case of the petitioners that,

initially, Lok Adhikar Sangh, a human rights' organisation, filed a writ petition being Special Civil Application No.6352 of 1987 before this Court on behalf of the people of three tribal villages, viz., Amod, Maljipura and Bhuri. Thereafter, the Corporation stopped this practice and started following the procedure of the Land Acquisition Act. The petitioners stated that the respondents have in the past paid Rs.75,000/- to tribals whose kachcha houses were acquired for the mining purpose.

5.5 It is the case of the petitioners that the Mamlatdar, Jhagadia, issued a notice to the petitioners that, near village Maljipura, the Corporation obtained a stock for lignite. The Corporation addressed a letter dated 3.6.1999 to the Collector in this behalf and the Corporation also decided to rehabilitate the petitioners to some other land as per Section 63 of the Gujarat Land Revenue Code. The Corporation has also purchased some land and about 30 people had already shifted to the new site. However, the Mamlatdar directed the petitioners to vacate the land in question. It is submitted that the impugned notices are passed without affording any opportunity of hearing to the petitioners.

5.6 It appears that the petitioners have made representation to the Deputy Collector and Mamlatdar and on 21.1.2004 they have submitted a charter of demands in writing to both of them. It is the case of the petitioners that the petitioners paid tax to the Panchayat for the use of the property.

5.7 In view of the aforesaid circumstances, Special Civil Application No.1716 of 2004 was filed on apprehension somewhere in January 2004 with a prayer that this Court may declare the action of the respondents of seeking to displace the petitioners from their current settlement in village Maljipura as violative of Articles 14, 19 and 21 of the Constitution of India. The petitioners further prayed to restrain the respondents from forcibly shifting the petitioners and their families from the land in question situated at village Maljipura to any other place.

6. By order dated 10.2.2004, this Court issued notice as to interim relief making it returnable on 1.3.2003. In the said order dated 10.2.2004, the Court noted that the petitioners have also made representations before the respondent-Authority on 21.1.2004. The Court also granted an order of status-quo by way of ad-interim relief until the representations filed by the petitioners

are decided and communicated to them.

6.1. As stated hereinabove, Special Civil Applications Nos. 2479 of 2004 to 2491 of 2004 have also been filed by the individual petitioners.

7. As common questions of facts and law are involved in these petitions, they are disposed of by this common judgment.

8. On behalf of the Corporation, an affidavit-in-reply was filed by Anil Kumar Garg, General Manager (Projects) of the respondent-Corporation. In the affidavit-in-reply, it is stated that the present petitions deserve to be rejected on the ground that the petitioners have suppressed material facts from this Court. It also leads to multiplicity of proceedings. They have tried to mislead this Court into passing an ex-parte order of interim relief. In view of the same, the learned counsel for the Corporation has submitted that this Court may vacate the ad-interim relief. The learned counsel, further, submitted that, initially, Lok Adhikar Sangh filed Special Civil Application No.6352 of 1987 (first petition) before this Court on behalf of people of three tribal villages, via. Amod, Maljipura and Bhuri. Thereafter, the Corporation stopped this practice and started following the procedure of the Land Acquisition Act. In that matter, the Corporation has filed an affidavit and the petitioners had withdrawn the said petition. The order of withdrawal passed by the Division Bench (Coram: N.G. Nandi and D.A. Mehta, JJ.) on 5.2.2003 is produced at page 64 of the compilation.

8.1 It is the case of the respondents that thereafter Special Civil Application No.2741 of 2001 (second petition) came to be filed by 43 petitioners of village Maljipura. The petitioner of present Special Civil Application, Pratapbhai Desaibhai Vasava, is petitioner No.8 in the second petition. Some of the petitioners in the present petition are also the petitioners in the second petition. In that second petition, the petitioners prayed that notification issued under Section 4 of the land Acquisition Act in respect of the lands of the petitioners be quashed and set aside as unconstitutional, being violative of Articles 14, 19(1)(g) & (e) and 21 read with Article 46 of the Constitution of India. It is the case of the respondents that the prayers made in these petitions are almost same. Initially, the petitioners did not join State of Gujarat as party. Ultimately, the Court passed an order and, thereafter, the State of Gujarat was made party in the

said proceedings. The Corporation filed affidavit-in-reply in the second petition and the second petition is still pending.

8.2 It is the case of the respondents that, thereafter, the villagers of village Amod filed Special Civil Application No.505 of 2003 (third petition) before this Court through learned advocate, Mr. Joy Mathew. In the third petition, the General Manager of the Corporation has been joined as party-respondent. In the third petition, the petitioners made a reference to the first petition. In the third petition, the petitioners have, inter alia, prayed for issuance of a writ, order or direction declaring that the action of the respondents in initiating acquisition proceedings for acquiring land of the Tribes living in scheduled areas covered to the 5th Schedule of the Constitution without prescribing for an adequate scheme for rehabilitation and re-settlement of such tribes is arbitrary, unreasonable and violative of Articles 14, 19(1)(d),(e) and 21 read with Articles 39, 39(b), 39A and 46 of the Constitution of India. In the third petition also, the Corporation appeared and contested the matter. The Division Bench (Coram: K.R. Vyas & Akshay H. Mehta, JJ.) by judgment and order dated 9.5.2003 dismissed the third petition. A copy of the judgment and order dated 9.5.2003 is produced at page 130 of the compilation. At the time of hearing, it has been informed that, against the judgment and order dated 9.5.2003, the petitioners filed Special Leave to Appeal (Civil) NO.10135 of 2003 in the Supreme Court and the Supreme Court by order dated 29.5.2003 dismissed the said Special Leave Petition.

8.3. The learned counsel for the respondent-Corporation has submitted that the petitioners have also not made reference to the third petition in the present petition, though the same was filed by learned advocate, Mr. Joy Mathew, who happens to a colleague of learned Senior Counsel, Mr. Girish Patel, who had filed the earlier petitions.

8.4. In view of the aforesaid averments, the learned counsel for the respondent-Corporation submitted that, when the petitioners did not divulge the details of earlier proceedings in the present petition, though they were aware of the same, this Court may dismiss the present writ petition solely on the grounds that
(i) suppression of material facts;
(ii) it leads to multiplicity of proceedings;
and
(iii) the petitioners have abused process of law.

In support of the submissions, the learned counsel for the Corporation has relied upon the judgment of the Supreme Court in the case of Upadhyay & Co vs. State of U.P. and others, reported in (1999) 1 SCC p.81, wherein, the Apex Court held in paragraph 11, page 84, that it is not permissible practice to challenge the same order over again after withdrawing the special leave petition without obtaining permission of the court for withdrawing it with liberty to move for special leave again subsequently. The learned counsel for the Corporation has further relied upon the judgment of this Court in the case of Bai Virkor D/o. Mulsing Ramsing v. Prajapati Damodar Boghabhai, reported in 1979 (2) GLR p.652. In paragraph 14, at page 659, the Court held that, when action amounts to abuse of process of the court, in such cases, the Court has ample power to strike off the pleadings as frivolous, vexatious, oppressive or as wanting in bona fides. In paragraph 16, the Court held that the proceedings which are found to be tainted and which can be dubbed as the abuse of the process of the court should be consigned to the record room without passing any orders on merits and they should be treated as not maintainable.

8.5 The learned counsel for the Corporation has relied upon the judgment of the Division Bench of this Court in the case of N.D. Patel & Company vs. Manubhai Karsanbhai Parmar and another, reported in (1984) 25 (1) GLR p.386. In that matter, the Court held that, since this important and material fact appears to have been deliberately suppressed from the Court, we are not inclined to interfere with the award passed by the labour Court on this ground of suppression of material fact alone. The same view is reiterated by this Court in the case of Vijay J.Gadhvi vs. State of Gujarat and others, reported in 29 (2) GLR 902. The learned counsel for the Corporation has relied upon the judgment of this Court in the case of Dahyabhai Ranabhai Vaghela vs. Bloom Dekor and others, reported in 1995 (1) GLH p.865. He has relied upon paragraphs 20, 22 and 23 and submitted that in that case the Court was concerned with successive suits for similar reliefs with the same set of facts against the same defendant. The Court held that the devise adopted by the plaintiff was clear abuse of the process of the court and the High Court should strongly condemn the said practice.

9. On behalf of the State of Gujarat, learned AGP, Mr. Hasurkar, has appeared. The learned AGP submitted that originally when the petition was filed the petitioners had challenged the action of the Mamlatdar

seeking to displace the petitioners from the current settlement in village Maljipura. In that behalf, the petitioners had challenged notices dated 21.1.2004, by which the Government and the GMDC decided to dispossess the petitioners from their land. The learned AGP submitted that it was stated that the said action was challenged only on the ground that the petitioners are not heard. He has pointed out that the Mamlatdar has now passed the order dated 14.7.2004 after hearing the petitioners. Therefore, the grievance of the petitioner does not survive and, therefore, on this ground also, the petition of the petitioners deserves to be rejected.

9.1 Mr. U.C. Vasava, Mamlatdar, Jhagadia, District Bharuch, has filed affidavit-in-reply dated 23.7.2004 on behalf of the State of Gujarat. In the affidavit-in-rely, it has been stated that the possession of the said lands will not be acquired without following due procedure of law. So far as alternative site is concerned, all the facilities have been provided by the respondent-Corporation which includes electricity, cement concrete road, street light, stand water points to each house, school building, panchayat ghar, etc. It is further stated that the following facilities were given:
(a) Gauchar land is acquired and is allotted to newly constituted village.
(b) So far as the residential houses situated in existing village are concerned, valuation thereof is made through R&B Department and they will be paid moneys as soon as they shift there.
(c) So far, out of 69 families, 30 families have been already shifted to newly constituted village and they have already been paid compensation.

It is further stated that, for the above referred facilities, the Corporation has already spent a good amount as under:

Sr. No.	Particulars	Expenses incurred
1.	Water	Rs.3,50,000
	Overhead Tank	Rs.1,37,000
	Pipeline	Rs.2,36,000
2.	Electricity	Rs.2,61,000
3.	Road	Rs.5,00,000
4.	School	Rs.6,23,000

5. Wire Fencing Rs. 61,000

Along with the affidavit-in-reply, the respondents have annexed a table reflecting plot of site of the petitioners in Gamtal, compensation offered to them, and their respective position in the earlier petition which is pending. The learned Assistant Government Pleader also produced a copy of the order dated 14.7.2004 passed by the Mamlatdar. He submitted that, in view of the order of the Mamlatdar, the present petition is not maintainable at law because the grievance which the petitioner raised was raised against the show cause notice that the Government has passed the order without hearing the petitioners. However, now that grievance does not survive in view of the order of the Mamlatdar.

10. Learned Senior Advocate, Mr. Girish Patel, in rejoinder, submitted that the petitioners are tribals residing in villages. He has stated that the petitioners who are tribals do not know about their legal rights. It is no doubt true that earlier Special Civil Application No.6352 of 1987 was filed and the petitioners have made a reference to the said petition. He has further stated that it is also no doubt true that the petitioners have not made any reference to Special Civil Applications Nos. 2741 of 2002 and 505 of 2003. He conceded that when the petitioners did not make reference to these two petitions in the present petition, it was a bona fide mistake, but he stated that these facts are not such material by which the petitioners obtained any undue advantage/gain from this Court. He submitted that the present petition was filed in a hot hurry and through oversight the said facts have not been stated. However, there is no deliberate or willful attempt on the part of the petitioners to mislead this Court and to obtain any undue advantage/benefit from this Court. He stated that another Special Civil Application No.2741 of 2002 was filed by 43 tribals of village Maljipura. In this petition, the action of the Corporation of acquiring the possession of the houses and other homestead lands of tribals in the village Maljipura was challenged. The said writ petition is pending. The subject matter of the present petition and that of Special Civil Application No.2741 of 2002 are slightly different. In the present petition, the petitioners have challenged the orders passed by the Mamlatdar, Jhagadia. That was not the case in the previous matter. Further, Special Civil Application No.505 of 2003 was filed by the villagers of Amod Village. In that case also, the action of the Corporation was challenged and, therefore, they

were made parties. When the Court is considering a technical plea like suppression of fact and/or multiplicity of proceedings, the Court must see that the petitioners are tribals residing in small village. The petitioners are poor, illiterate, ignorant of their rights. They are not corporate clients who are aware of all the facts and there are lot of people to assist them in the proceeding.

10.2 The learned counsel submitted that right to life under Article 21 includes right to have a shelter over the head as part of the said right. The learned counsel has further submitted that the right to shelter is not merely one of the 'Liberties' under Article 21 as no human being, not even animals, can maintain or sustain even their biological existence without some sort of Shelter. The Court must have little different perception when the Court considers the contention of the respondents regarding suppression of fact and multiplicity of proceedings in this set of circumstances.

11. We have considered the contentions raised in the affidavit-in-reply and in the affidavit-in-rejoinder. We have also considered the submission of Mr. S.B.Vakil, learned Senior Advocate, appearing for the Corporation, regarding suppression of fact and multiplicity of proceedings. In this case, the petitioners are tribals and they are fighting for their right to shelter. The learned counsel submitted that the right to life under Article 21 of the Constitution includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head. We have also considered the resolution of the Ministry of Rural Development, wherein the National Policy on Resettlement and Rehabilitation of Project Affected Families -2003 is formulated. All these facts would lead to only one conclusion that now the Government has liberal approach against the persons whose lands are acquired and their rehabilitation is the prime concern of the Government. Further, in the present petition, the Mamlatdar issued notice to the petitioners and it is the case of the petitioners that, until Mamlatdar decides, they should be protected. Now, the Mamlatdar has already passed the order dated 14.7.2004 as stated hereinabove. Once the Mamlatdar has passed the order dated 14.7.2004, according to us, the whole controversy is narrowed down. We have also considered the affidavit-in-reply filed by the Government. We think it proper not to deal with the larger questions regarding suppression of facts and multiplicity of proceedings raised by learned Senior

Advocate, Mr. S.B.Vakil. Under the circumstances, the present petition is required to be rejected.

12. It may be noted that we have rejected the petition only on the ground that now the Mamlatdar has passed a final order. However we have not expressed anything on the merit of the matter regarding the legality and validity of the order of the Mamlatdar. Rejection of this petition cannot be considered that this Court has opined regarding legality and validity of the order dated 14.7.2004 passed by the Mamlatdar.

13. In the result, the petitions are rejected. The orders of status-quo passed by this Court on 10.2.2004 and 22.3.2004 stand vacated. Notice in each petition is discharged with no order as to costs.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)

(swamy)